HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.NO. 22859 OF 2007

DATED: 30.10.2007

Between:

N. Bhoomaiah

… Petitioner

and

The Dy. Transport Commissioner and Secretary, Regional Transport Authority, Karimnagar and another

… Respondents

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.NO. 22859 OF 2007

ORAL ORDER:

This writ petition is filed for a writ of Mandamus to declare the seizure of the petitioner's vehicle bearing Registration No.AP. 15 U-0369 under the Vehicle Check Report No.1692180 dated 24.10.2007 of the respondent No.2, as illegal and arbitrary.

The petitioner holds a pucca contract carriage permit and has been plying his vehicle under the said permit. The said vehicle was seized by Respondent No.2 vide Check Report dated 24.10.2007 with the following allegations.

> **"7. Offences/Irregularities: Stopped and checked the above vehicle while proceeding from Mancherial to Hyderabad (Champapet) with 35 members of a marriage party and found:**
> **1). As Permit the vehicle is approved to ply within Karimnagar District only. But carrying a party from Mancherial to Hyderabad covering more than 3 Districts. Hence plying without permit. As such attracts higher rate of tax.**
> **2). As per the seating capacity is only 37 in all. But physically there are 40 in all seats are fixed in the vehicle. Hence unauthorized in respect of seating capacity of 3 seats and been attracts, additional tax.**
> **Hence, seized the vehicle U/S 8 of A.P.M.V. Act and 207 of MV Act and kept at DLTS, Nagole."**

The present writ petition is filed questioning the said seizure.

Heard Sri P. Raja Gopala Chary, learned counsel for the petitioner and learned Government Pleader for Transport.

At the hearing, the learned Government Pleader submitted that on 25.10.2007, a show cause notice was issued calling upon the petitioner to show cause why the difference of tax shall not be paid. The learned counsel for the petitioner submitted that he is not aware of such a notice having been served on the petitioner.

As on today, even according to the respondents, no tax has been finally determined. Whether the petitioner is liable to pay the tax as indicated in the alleged show cause notice or not, is an aspect requiring final determination after receiving an explanation from the petitioner. Since the vehicle is prone to deterioration in its condition if it is kept idle, its continued detention would cause serious harm to the interests of the petitioner. If the petitioner has committed violation of the provisions of the Motor Vehicles Act, 1988 and the A.P. Motor Vehicles Taxation Act, 1963 on determination of his liability he is bound to pay the tax or penalty subject to remedies available to him in law.

Therefore, I feel it appropriate that a direction be given to the respondents to release the vehicle to the petitioner subject to the following conditions:

1). Respondent No.1 shall release the vehicle bearing Registration No.AP 15 U-0369 to the petitioner subject to his filing an undertaking that he will not alienate or in any manner transfer the ownership of the vehicle, pending determination of the petitioner's liability.

2). As and when the liability is determined by Respondent No.1, he is at liberty to enforce the same subject to the remedies available to the petitioner.

The writ petition is disposed of. There shall be no order as to costs.

C.V. NAGARJUNA REDDY, J

Date: 30.10.2007

NOTE: CC in two days.
BO
cvm